

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

BONNIE M. MCGRUFF

Plaintiff,

Case No. 3:18-cv-372

Judge Walter H. Rice

vs.

BEAVERCREEK CITY SCHOOL DISTRICT

Defendant.

**AMENDED COMPLAINT WITH
JURY DEMAND**

Now comes Plaintiff Bonnie McGriff by her counsel and for her Amended Complaint against Defendant Beavercreek City School District hereinafter referred to as “Defendant” states as follows:

I. PARTIES, JURISDICTION & VENUE

1. Plaintiff Bonnie M. McGriff (herein “Plaintiff or McGriff”) is, and at all times relevant hereto was a citizen of the state of Ohio.
2. Defendant Beavercreek City School District (“BCSD or “Defendant”) is an Ohio school district that provides classroom instruction for students in Beavercreek school district.
3. This action arises under the Age Discrimination in Employment Act and the Americans with Disabilities Act. Plaintiff is a female, fifty-four years of age and suffers from a permanent hearing disability which began when she was 31 years of age, and which may be progressive in nature. The hearing problem is nerve damage related, resulting in a 50% hearing deficiency and requires the use of hearing aids. Defendant is acutely aware of Plaintiff’s hearing which impacts both her personal and work life. Plaintiff often has to stand very close to the person she is talking

to make sure she understands what is being said. Plaintiff is also required to focus on making eye contact with the person she is talking to as this process assists her in the communication efforts. Plaintiff's hearing loss is exacerbated when she encounters background noise, which is very common in a school environment. Plaintiff also suffers from fibromyalgia which can be impacted when Plaintiff is experiencing stress associated with her hearing deficiency.

4. Jurisdiction in this Court is proper at least pursuant to the aforesaid federal acts.

5. Venue properly lies with the Southern District of Ohio pursuant to 29 U.S.C. §1132 (e)(2) because the acts herein complained of have occurred within this district.

6. On or about August 7, 2017, Plaintiff filed a formal complaint of discrimination with the Ohio Civil Rights Commission against Defendant.

7. Subsequently, on August 13, 2018 the United States Equal Employment Opportunity Commission issued a Dismissal and Notice of Rights which was received by Plaintiff on August 15, 2018. A copy of the Dismissal and Notice of Rights ("Notice") is attached hereto as Exhibit A.

8. The Notice provided that Plaintiff had the right to file a civil action in an appropriate United State District Court within 90 days of receipt of the Notice. See Exhibit A. This action is being brought within 90 days of Plaintiff's receipt of the Notice.

II. FACTUAL BACKGROUND

9. Plaintiff restates the allegations of paragraphs 1-8 as if fully restated herein.

10. Plaintiff Bonnie McGriff is a Caucasian female, fifty four years of age and is still employed by Defendant and has been employed by said Defendant since July 1996. Plaintiff has a hearing disability, and further suffers from fibromyalgia as set forth above.

11. During her employment with Defendant, Plaintiff has always received exceptional

performance reviews of a very positive nature.

12. Plaintiff has taught Spanish for more than 30 years (twenty-one years at BCSD). Prior to the 2017-18 school year, Plaintiff's was given a job transfer to teach French only, which Plaintiff believes is a precursor to forcing her out of employment due to her age and disability.

13. Plaintiff has taught Spanish in an exceptional manner for her entire career despite suffering from a hearing disability and fibromyalgia. The last time she taught French I was nearly twenty years ago; and at the time of the job transfer, she had never taught French II.

14. Plaintiff believes the transfer was not in the best interest of Defendant's students and was calculated for her not to be successful, so she could be eventually forced out of employment.

15. Teaching French requires very discriminating ears and even with her hearing aids it is very difficult for Plaintiff to satisfactorily perform her job duties when teaching French as opposed to when she is teaching Spanish. The stress of teaching French also has a negative impact on her fibromyalgia condition and has required that Plaintiff receive medications for stress, anxiety and depression.

16. Some substantially younger and non-disabled employees were provided more favorable teaching assignments than Plaintiff, who is the Department Chair.

17. One of the employees who is substantially younger than Plaintiff and been given more favorable treatment is married to the Defendant's PR Director in the Central Office, and had only worked with Defendant for three years at the time she received more favorable job assignments. Further, this individual only has a Spanish minor, but was assigned to teach upper level Spanish.

18. In addition, there were three Spanish staff members (two full-time, one part-time) that did not have a full class load, yet they were provided more favorable Spanish job assignments than Plaintiff, who has the most seniority of any Spanish instructor at Defendant.

19. The job assignments were manipulated by Defendant to afford better classroom assignments to newer and substantially younger and non-disabled employees. These assignments do not require walking between buildings on Defendant's campus as does Plaintiff's assignments which can exacerbate her fibromyalgia and create a stressful and hostile work environment. Due to her seniority which is clearly related to her age, Plaintiff should have been afforded these better classroom assignments, consistent with Defendant's prior employment practices.

III. CAUSES OF ACTION

A. AGE DISCRIMINATION

AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, 29 U.S.C. § 621

20. Plaintiff restates the allegations of paragraphs 1-19 as if fully restated herein.
21. Plaintiff is a member of a class of persons protected from discrimination due to her age.
22. During her employment with Defendant, Plaintiff was treated differently than substantially younger employees in respect to employment opportunities, job assignments, and transfers.
23. Defendant awarded favorable job assignments/transfers to substantially younger employees in a disproportionate manner that violated the state and federal laws/regulations referenced herein. Plaintiff's new job assignments have created a hostile work environment resulting in new required medications for stress, anxiety and depression for Plaintiff and the additional travel associated with the assignments prove more difficult for Plaintiff due to her age and disabilities.
24. As a direct and proximate result of Defendant's unlawful actions Plaintiff has been damaged, at least in the form of lost pay, benefits and attorney fees.

25. Plaintiff has also suffered stress, including the aggravation of her fibromyalgia condition, anxiety, emotional distress, depression as a result of Defendant's unlawful actions. Plaintiff has advised Defendant about the medical consequences of her hostile work environment.

26. Defendant's prior practice has been to afford favorable classroom assignments to teachers with significant seniority, a practice which is not being followed now in respect to Plaintiff.

III. CAUSES OF ACTION

B. DISABILITY DISCRIMINATION

AMERICANS WITH DISABILITIES ACT OF 1990, 42 U.S.C. § 1201, et seq.

27. Plaintiff restates the allegations of paragraphs 1-26 as if fully restated herein.

28. Plaintiff, who suffers from a permanent hearing disability, is a member of a class of persons protected from discrimination due to her disability. Plaintiff also suffers from fibromyalgia a condition which can be aggravated and exacerbated by her hearing deficiency.

29. During her employment with Defendant, Plaintiff was treated differently than non-disabled employees in respect to employment opportunities, job assignments, and transfers.

30. Defendant awarded favorable job assignments/transfers to non-disabled employees in a disproportionate manner that violated the state and federal laws/regulations referenced herein. Furthermore, Plaintiff's new job assignments have created a hostile working environment for her and the extra travel associated with the assignments have exacerbated her hearing disability as well as her fibromyalgia. Further Defendant's stress, anxiety and depression have resulted in her being prescribed medications for same.

31. As a direct and proximate result of Defendant's unlawful actions Plaintiff has been damaged, at least in the form of lost pay, benefits and attorney fees.

32. Plaintiff has also suffered stress, including the aggravation of her fibromyalgia condition, anxiety and emotional distress as a result of Defendant's unlawful actions. Plaintiff has advised Defendant about the medical consequences of being subject to this hostile work environment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Bonnie M. McGriff respectfully demands judgment against Defendant Beavercreek City Schools District and prays for the following relief:

- A. An Order awarding Plaintiff the appropriate job assignment for teaching the Spanish language;
- B. An award of prejudgment and post judgment interest;
- C. An award of reasonable attorneys fees and costs incurred pursuant to all applicable federal statutes;
- D. An award of back pay and all benefits due and owing;
- E. An award of compensatory damages in excess of Twenty-Five Thousand Dollars (\$25,000);
- F. For such other relief that this court deems just and equitable.

Respectfully submitted,

DUWEL LAW

/s/ David M. Duwel

DAVID M. DUWEL (0029583)
130 West Second Street, Ste 2101
Dayton, Ohio 45402
PH: (937) 297-1154
FAX: (937) 297-1152
Attorney for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury.

/s/ David M. Duwel

DAVID M. DUWEL (0029583)

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's CM/ECF and copies will be mailed via U.S. Mail to those parties to whom electronic notice has not been sent. Parties may access the filing through the Court's e-filing system.

/s/ David M. Duwel_____

Attorney at Law



EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Bonnie M. McGriff**
2878 Tara Trail
Beavercreek, OH 45434

From: **Indianapolis District Office**
101 West Ohio St
Suite 1900
Indianapolis, IN 46204

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

22A-2017-03415

Jeremy A. Sells,
State & Local Coordinator

(317) 226-7221

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

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The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☐

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☒

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

A handwritten signature in cursive script that reads "Michelle Eisele".

Enclosures(s)

Michelle Eisele,
District Director

August 13, 2018

(Date Mailed)

cc: **HR DIRECTOR**
BEAVERCREEK CITY SCHOOLS
3040 Kemp Road
Beavercreek, OH 45431